Supreme Court, U.S.
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No. 00-1601

IN THE

Supreme Court of the United States

WENDELL D. BELDEN,

Petitioner,

v.

BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OWNERS OF ISLAND PARK, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CIVIL APPEALS, DIVISION FOUR

BRIEF IN OPPOSITION

SIDNEY K. SWINSON
GABLE & GOTWALS
100 West Fifth Street
Suite 1100
Tulsa, OK 74103-4217
(918) 595-4800

W. NEIL WILSON
Counsel of Record
RICHARD D. JAMES
WALLACE, OWENS, LANDERS, GEE, MORROW, WILSON, WATSON & JAMES
P.O. Box 1168
Miami, OK 74355-1168
(918) 542-5501

Attorneys for Respondents

166994

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

LIST OF PARTIES AND STATEMENT PURSUANT TO RULE 29.6

The Respondents are Corlett Enterprises, LLC and the Council of Unit Owners of Island Park, an Oklahoma Unit Ownership Estate.

Respondent, Corlett Enterprises, LLC, has no parent corporation and no publicly held company owns 10% or more of its stock.

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RESPONSE TO PETITION FOR CERTIORARI

Pursuant to Rule 15, the above captioned Respondents hereby submit the following in answer to the Petition for Certiorari filed herein filed by the Petitioner.

STATEMENT OF THE CASE

After becoming involved in a dispute over a boat dock with the developer (Corlett Enterprises, LLC) and the Council of Unit Owners of Island Park, an Oklahoma Unit Ownership Estate. Mr. Wendell Belden, an owner in the Unit Ownership Estate, had the record searched and determined that a strip of land, most of which is the subject of this litigation, was in the record name of Charles J. Davis. Mr. Davis had filed Bankruptcy in the United States Bankruptcy Court for the Northern District of Oklahoma without listing that property as an asset. Mr. Belden asked that the Bankruptcy be re-opened and an offer was made to purchase the tract. Mr. Corlett, a creditor in the Bankruptcy Estate, received notice and caused an Objection to be filed advising that various parties had claims regarding said real estate. None of the other Respondents were involved or had notice of the bankruptcy proceeding.

Based upon a hearing May 28, and thereafter on July 2, the Bankruptcy Court Ordered and authorized the Trustee to sell to Mr. Belden whatever interest Mr. Charles J. Davis may have had at that time without warranty. Suit was filed on June 5, 1998, on the questions of adverse possession and reformation of Deed. A Motion to Dismiss was filed by Mr. Belden together with a Motion for Summary Judgment on the issues of adverse possession and the assertion that the District Court was without jurisdiction. Based on an

agreement between the parties the Respondents moved for an Order of the Bankruptcy Court "annulling the automatic stay in the Bankruptcy Court". The Bankruptcy Court found "Cause exist to annul the automatic stay of 11 U.S.C. § 362(a), to permit Movants to proceed with the Quiet Title Action . . ." the Order concluded as follows:

> IT IS THEREFORE ORDERED, that the automatic stay of 11 USC § 362 (a) be and is hereby annulled as related to subject property from and after May 28, 1998, to permit Movants to proceed with the Quiet Title Action in the District Court of Delaware County, Oklahoma.

Mr. Belden thereafter withdrew his Motion to Dismiss in the District Court. The trial Court sustained Appellant's Motion with regard to claim of adverse possession and the matter proceeded to trial based upon the issue of reformation of Deed. During the trial of the matter the only evidence presented with regard to the intent of the Grantor concerning the conveyances which were the basis for the Plaintiffs claim of title was that in his four (4) separate conveyances (1974 Davis to Ebling, 1978 Davis to McClure, 1980 Davis to Kathol, and 1982 Davis to Eden), intended to convey all of his interest in the area. After these sales Mr. Davis ceased to maintain the property because he considered it to be a part of the property conveyed to these third parties. The only evidence submitted during the trial of the case with regard to the intent and understanding of the Grantees was that they and their successors in title continued to maintain, utilized, and exert domain and control under the belief of ownership with regard to the tracts which are the subject matter of the litigation. There was absolutely no evidence presented to the contrary.

The tract which is the subject matter of the litigation consists of a hard surface roadway bordered with grass and well maintained white fences which constitutes the only access to the residential premises adjacent to the roadway, and a small, contiguous, triangle shaped tract adjacent to property owned by the Grand River Dam Authority.

The Trial Judge entered findings of fact and conclusions of law which reformed the Charles J. Davis deed with regard to a portion of the property and declined to reform other conveyances, thereby quieting title in Mr. Belden to a portion of the tract. Mr. Belden's ownership, however, was found to be subject to an undivided one-half (1/2) interest claim in favor of Mr. Corlett, who had acquired the interest of Isla Davis, the wife of Charles J. Davis, who was not involved in the Bankruptcy proceedings filed by her husband.

The Court also found the entire tract was burdened by an easement of necessity as it provided sole access to the Island Park homeowners and other residents in the area. This finding was based on uncontroverted evidence. By agreement the judge had viewed the property.

It is from this decision that the Defendant appealed. The Court of Appeals affirmed the ruling below and denied a petition for rehearing. The Oklahoma Supreme Court denied certiorari.

ARGUMENT AND AUTHORITY WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

The due process and jurisdictional issues suggested are contrary to the consent order in the bankruptcy court and facts established or admitted.

ANSWER TO PROPOSITIONS ADVANCED BY PETITIONER

A. The Trial Court's Ruling on an Easement by Necessity for Access to the Premises was Supported Evidence and within the Power of the Court to Grant and Petitioner had Opportunity and Addressed the Matter in his Testimony.

Counsel for Mr. Belden at trial are no longer of record, but the question as to whether there was an access easement by necessity was first discussed by counsel and the Judge at a motion docket which preceded the trial by a significant portion of time. The Trial Judge at the request of the parties had viewed the premises and the evidence established that the roadway was the only access and based upon that evidence and argument of counsel, the Trial Judge found an easement by necessity. During the trial Mr. Belden replied in the negative when he was asked if he ever had the intention to exclude any of the owners of the property from access to that land. A court of equity which obtained jurisdiction of the controversy on any ground or for any purpose will retain jurisdiction for the purpose of administering complete relief and doing entire justice to avoid multiplicity of suit and may treat a pleading amended upon an issue fully tried. *Watkins v. McComber*, 1952 OK 422, 256 P.2d 158; *Welch v. Ruby*, 198 P.2d 432 (Okla. 1948); *Vinson v. Oklahoma City*, 66 P.2d 933 (Okla. 1937); and *Jackson v. Jackson*, 167 P.2d 51 (Okla. 1946). No objection or request for a continuance was made at trial with regard to the easement and Mr. Belden testified about the owners using the road. There was opportunity, no objection and no violation of due process.

B. There is no estoppel based upon the Bankruptcy Court issuing a Quit Claim Deed. The Delaware County District Court had jurisdiction.

Jurisdiction was in the Oklahoma District Court. It is significant that the Bankruptcy Court issued two (2) Orders. One authorized the Trustee to issue a Quit Claim Deed to the Defendant and the second which appears in the transcript attached to Belden's "Withdraw of Motion to Dismiss" provides in part as follows:

> IT IS THEREFORE ORDERED, that the Automated Stay of 11 USC §362(a) be and is hereby annulled as it relates to the subject property from and after May 28, 1999, to permit Movants to proceed with the quiet title action in the District Court of Delaware County, Oklahoma. ENTERED this 13th day of July, 1999. /S/Terrance L. Michael, United States Bankruptcy Judge.

Belden's attorneys in that proceeding consented to that Order. In other words, all the parties including the Bankruptcy Judge agreed that the issue regarding the title to the property would be adjudicated by the District Court of Delaware County. Here again, as in the question of owner's access to the property, Mr. Belden has changed his mind. There were no issues presented to the Bankruptcy Court. The Respondents were not parties or involved in the bankruptcy court proceedings. There was jurisdiction in State Court.

SUMMARY

The Trial Court having acquired jurisdiction in an equitable matter has the power under previous decisions of this Court to administer relief in accordance with the evidence as submitted. The record is quite clear that the Bankruptcy Court determined no issues and that all the parties, their attorneys and the Bankruptcy Court itself anticipated and desired that the question of title be determined by the District Court of Delaware County.

Respectfully submitted,

SIDNEY K. SWINSON
GABLE & GOTWALS
100 West Fifth Street
Suite 1100
Tulsa, OK 74103-4217
(918) 595-4800

W. NEIL WILSON
Counsel of Record
RICHARD D. JAMES
WALLACE, OWENS, LANDERS,
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WATSON & JAMES
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Attorneys for Respondents